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**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Docket Number (Optional)

**11962ROUS02U**

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on May 5, 2006

Signature /Bruce E. Garlick, 36,520/

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Application Number

**09/766,267**

Filed

**Jan. 19, 2001**

First Named Inventor

**Wen Tong**

Art Unit

**2668**

Examiner

**Hanh N. Nguyen**

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

☒ attorney or agent of record. **36,520**  
Registration number \_\_\_\_\_

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Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

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**May 5, 2006**

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

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This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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In the Application of:  
Wen Tong et al.

Serial No.: 09/766,267

Filed: January 19, 2001

For: FRAME STRUCTURE FOR  
VARIABLE RATE WIRELESS  
CHANNELS TRANSMITTING  
HIGH SPEED DATA

§ Group Art Unit: 2662  
§ Examiner: Hanh N. Nguyen  
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/Bruce E. Garlick, Reg. No. 36,520/  
Bruce E. Garlick, Reg. No. 36,520

**REQUEST FOR REVIEW OF FINAL OFFICE ACTION**

Claims 1-15 and 17-24 are pending. Claims 1, 8, 15, and 21-24 are independent claims.

The Final Office Action mailed February 10, 2006 rejected claims 1, 2, 6, 8, 9, 13 and 15 under 35 U.S.C. 102(e) as being anticipated by Mochizuki (US Pat. No. 6,628,633 B1). rejected Claims 21-23 under 35 U.S.C. 103(a) as being unpatentable over Mochizuki in view of Hunsberger (US Pat. No. 6,167,282), and rejected claims 3-5, 10-12, and 17-20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Mochizuki in view of Rydbeck et al. (US Pat. No. 6,332,006 B1, "Rydbeck"). Claims 1 and 8 were also rejected under a double patenting rejection (not addressed herein), claims 7 and 14 were objected to, and claim 24 was allowed. Applicants disagree with the prior art rejections and request review.

**Claims 1, 2, 6, 8, 9, 13 and 15 are not anticipated under 35 U.S.C. 102(e) by Mochizuki because not all elements of these claims are met by Mochizuki**

Claim 1 is directed to a method for operating a base station to wirelessly transmit data communications to a plurality of user terminals on a single wireless carrier. Among other things, claim 1 requires that the base station transmits a superframe to a plurality of user terminals, the superframe including a plurality of high speed data frames. Claim 1 requires that each of the high speed data frames carries at least one data communication and includes: (1) a respective

indication of at least one user terminal for which the at least one data communication is intended;  
and (2) a respective indication of at least one data rate of the high speed data frame.

Mochizuki discloses a frame structure that allows a plurality of data terminals to share a spectrum in a time divided fashion. Referring to FIG. 3 of Mochizuki and related text at col. 7, lines 28-35, Mochizuki discloses “a format for a forward packet” that includes “a destination terminal identifier.” Col. 7, line 56 through col. 8, line 5 of Mochizuki describes how the forward packet may be formed with one of three transmission rates: R1, R2, or R3. The forward packet but does not include “a respective indication” of the transmission rate of the forward packet as is required by claim 1. Col. 8, lines 60-63 of Mochizuki, describes how “[e]ach mobile station despreads a spectrum of the forward signal using the forward spreading codes for the possible transmission rates R1, R2, and R3 to monitor the forward signal.” The mobile stations must use spreading codes for each possible transmission rate R1, R2, and R3 and then determine which despread signal is valid. These multiple despreding operations are required because the mobile station does not know the rate of the forward signal.

Mochizuki does not disclose “a respective indication of at least one data rate of the high speed data frame”, as is required by claim 1, Mochizuki fails to disclose, teach, or suggest all of the elements of claim 1, and does not anticipate claim 1 under 35 U.S.C. 102(e). Dependent claims 2 and 6 (that depend from claim 1) are not anticipated by Mochizuki for these same reasons. Independent claim 8 includes limitations similar to those of claim 1. For this reason, Mochizuki does not anticipate independent claim 8 or claims 9 and 13 that depend from claim 8. Independent claim 15 includes limitations similar to those of claim 1 and, for these same reasons, Mochizuki does not anticipate independent claim 15.

**Claims 21-23 are not obvious under 35 U.S.C. 103(a) over Mochizuki in view of**

**Rydbeck**

Claims 21-23 are independent. Claim 21 requires that “each of the high speed data frames includes: a respective indication of at least one user terminal for which the at least one data communication is intended; and a respective indication of at least one data rate of the high speed data frame.” The 103(a) rejection cites Mochizuki as meeting this limitation. As described above, Mochizuki does not meet this limitation and, for this reason, claim 21 is not obvious over Mochizuki in view of Rydbeck. Each of claims 22 and 23 require a similar/the same limitation and is not obvious over these references for the same reasons.

**Claims 3-5, 10-12, and 17-20 are not obvious under 35 U.S.C. 103(a) over Mochizuki**

**in view of Hunsberger**

Claims 3-5 depend from claim 1. Claims 10-12 depend from claim 8. Claims 17-20 depend from claim 15. As described above, Mochizuki fails to disclose all elements of independent claims 1, 8, and 15. The other cited references fail to meet the shortcomings of Mochizuki. Therefore claims 3-5, 10-12, and 17-20 are not rendered obvious by the Mochizuki in view of Hunsberger.